

## CONCISE EXPLANATORY STATEMENT

November 27, 2000 Public Hearing-Tumwater, Washington

November 29, 2000 Public Hearing-Spokane, Washington

January 26, 2001 Filing Date

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State-initiated amendments are adopted to comply with the requirements of Chapter 239, Laws of 2000 (ESHB 2647), which directed the department ("we" in this document) to "adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers." According to the statute, the permanent rules must be designed to:

- "Improve options available to ensure the safety of flaggers"; and
- "Ensure that flaggers have adequate visual warning of objects approaching from behind them."

Listed below are the specific amendments we adopted to satisfy the requirements of Chapter 239, Laws of 2000. All adopted amendments have been written to comply with the clarity criteria of Executive Order 97-02.

The following sections proposed for amendment did not receive comment and are adopted as proposed:

- **WAC 296-155-205** Head protection.
- **WAC 296-155-625** Site clearing.

We received public comment on the following sections and, when appropriate, modified our proposed amendments as indicated below.

### **AMENDED SECTION: WAC 296-155-305, Signaling.**

**Reason for Adopting Rule:** State-initiated amendments are adopted to:

- Re-title the section for clarity.
- Re-write the section according to clear rule writing principles.

**Comment Received on Section Title:** No comments were received regarding re-titling the section.

**Department Response to Comment:** N/A

**Changes to the Rule** (Proposed rule versus rule actually adopted): Section title adopted as proposed. Title reads "Signaling and flaggers".

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### **AMENDED SUBSECTION: WAC 296-155-305(1)**

**Reason for Adopting Rule:** State-initiated amendments are adopted to add:

- A new subdivision with updated references to the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).
- A requirement that persons on the job site with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.
- A requirement that traffic control devices, signs and barricades must be used according to the guidelines and recommendations in the MUTCD.
- Locations and addresses where interested parties can either purchase or read copies of the MUTCD.

**Comment Received on this Subsection:**

- Recommend a change be made to paragraphs 1, 3 and 4(b), referencing the MUTCD 1995 edition, Revision 4 instead of the Revision 3 that is currently listed.

**Department Response to Comment:**

- We agree and made the change.

**Comment Received on this Subsection:**

- The rule says that a qualified person is someone trained in and familiar with the provisions of Part 6 of the MUTCD. How is that ascertained? I would emphasize that flaggers when they are trained are made familiar with parts of the MUTCD, but they would not meet the qualification as stated here. Flaggers are not intended to do setups, but only to be familiar with what a setup should look like.

**Department Response to Comment:**

- We have deleted the definition of a "qualified person" and replaced it with the requirement that job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement. We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up.

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### **Comment Received on this Subsection:**

- The flagging course is strictly to teach flaggers how to flag. There's really not a portion in there to teach them setup. So, most of the flaggers get their training when they're on the job. . I do teach setup and signs and such but the class is not geared to that. The class is geared to flagging and your position on the road and how to protect yourself. So, who and where do these people get training for setup? Is there going to be a certification for that?

### **Department Response to Comment:**

- We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up. The standard as adopted does not require certification, but does emphasize the employer's existing obligation to ensure that employees are trained to perform their duties as they relate to safety and health.

### **Comment Received on this Subsection:**

- A traffic control supervisor is the only person dealing with traffic that has had actual training to do setup.

### **Department Response to Comment:**

- We do not require a Traffic Control Supervisor (TCS) certification. The TCS is a certification required by WSDOT for those working on state roads and highways. We believe that job site workers with specific traffic control responsibilities can be trained to meet the requirements of this rule, and the standard as adopted reflects this performance-based approach.

### **Comment Received on this Subsection:**

- This has been a long time coming. If we flaggers are ultimately responsible for the signage and placement of it (according to flagger certification), we should at least be confident that whomever is handling it KNOWS what they are doing.

### **Department Response to Comment:**

- Although we have decided to delete the qualified person requirement, we believe that job site workers with specific traffic control responsibilities can and should be trained to meet the requirements of this rule.

### **Comment Received on this Subsection:**

- WAC 296-155-305(1) is "ok".

### **Department Response to Comment:**

- Comment does not require a response.

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#### Changes to the Rule (Proposed rule versus rule actually adopted):

- Based upon public comments, **WAC 296-155-305(1)** has been rewritten and adopted as follows:

(1)(a) Except as otherwise required in these rules, traffic control devices, signs and barricades must be set up ~~((by a qualified person (a qualified person is someone trained in and familiar with the provisions of Part VI of the MUTCD)))~~ and used according to the guidelines and recommendations in the Federal Highway Administration's:

Manual on Uniform Traffic Control Devices (MUTCD), ~~((1988))~~ 1995 Edition-Revision ~~((3))~~ 4, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.

(b) Job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.

#### Note:

- You may purchase copies of the MUTCD by writing:  
US Government Printing Office  
Superintendent of Documents  
Mail Stop: SSOP,  
Washington DC 20402-9328
- You may read a copy of the MUTCD at any Department of Labor & Industries (L&I) Service Location.

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### **AMENDED SUBSECTION: WAC 296-155-305(2)**

**Reason for Adopting Rule:** State-initiated amendment is adopted to add:

- A new subdivision (b) clarifying that flaggers are to be used in a work zone only when other reasonable traffic control methods will not adequately control traffic.

**Comment Received on this Subsection:**

- WAC 296-155-305(2)(a) is a positive. I have seen too many crews on the road being a hazard to themselves and the public. WAC 296-155-305(2)(b) could be a negative. Most work zones have equipment entering and leaving the area, and this is most times under limited conditions (line of sight, etc.) Combined with the fact that due to lack of education, training, and human nature, most people tend to be confused or completely numbed to conditions while driving through work zones.

**Department Response to Comment:**

- We believe that WAC 296-155-305(2)(b) does not impair the safety of flaggers, construction workers or motorists. The language in (2)(b) that indicates that flaggers must be used only when other control methods are not adequate reflects one of the fundamental principles of the MUTCD, Part VI (see 6B-3c).

**Comment Received on this Subsection:**

- WAC 296-155-305(2) is "ok".

**Department Response to Comment:**

- Comment does not require a response.

**Changes to the Rule** (Proposed rule versus rule actually adopted):

- **WAC 296-155-305(2)** is adopted as proposed.

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### **AMENDED SUBSECTION: WAC 296-155-305(3)**

**Reason for Adopting Rule:** State-initiated amendments are adopted to:

- Add the requirement that a flagger's signaling directions must conform to the guidelines and recommendations of the MUTCD.
- Update and correct references to the MUTCD and the Washington State Department of Transportation (WSDOT) pamphlet "Washington State Modifications to the MUTCD".

**Comment Received on this Subsection:**

- Recommend a change be made to paragraphs 1, 3 and 4(b), referencing the MUTCD 1995 edition, Revision 4 instead of the Revision 3 that is currently listed.

**Department Response to Comment:**

- We agree and made the change.

**Comment Received on this Subsection:**

- The only disagreement that my co-workers and I have with the MUTCD is on positioning our body either with our back to the work zone or to the traffic. In both cases we are vulnerable and risk our safety. We place ourselves with our "Toes to the line" or to the "Fog line" in cases of sharp curves that limit distance sight. This allows us to have a line of vision covering all areas of concern.

**Department Response to Comment:**

- We believe that flagger certification training and the MUTCD, Part VI (see 6C-5a and 6E-6), if properly followed, adequately address flagger placement.

**Comment Received on this Subsection:**

- WAC 296-155-305(3) is "ok".

**Department Response to Comment:**

- Comment does not require a response.

**Changes to the Rule** (Proposed rule versus rule actually adopted):

- Except for the change to correct the MUTCD reference, **WAC 296-155-305(3)** is adopted as proposed.

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### **AMENDED SUBSECTION: WAC 296-155-305(4)**

**Reason for Adopting Rule:** State-initiated amendments are adopted to:

- Rewrite flagger hand signaling and paddle requirements for clarity and to accurately reflect MUTCD requirements.
- Allow a flagger to use red flags during emergency situations
- Allow a flagger to use red flags during non-emergency situations to supplement sign paddles or lights.
- Update MUTCD reference.
- Replace outdated reference to the "transportation commission" with the correct reference to WSDOT.

**Comment Received on this Subsection:**

- Recommend a change be made to paragraphs 1, 3 and 4(b), referencing the MUTCD 1995 edition, Revision 4 instead of the Revision 3 that is currently listed.

**Department Response to Comment:**

- We agree and made the change.

**Comment Received on this Subsection:**

- In paragraph 4(a), we recommend adding that a flag may be used in addition to the sign paddles or in emergency situations. Our thinking is that the red signal flag is a good option when it is used to give additional emphasis to draw the driver's attention to particularly hazardous conditions or emergency situations.

**Department Response to Comment:**

- We agree and added language allowing the use of red flags during emergency situations. In non-emergency situations, red flags can be used in a flagger's free hand to supplement WSDOT approved sign paddles or lights.

**Comment Received on this Subsection:**

- In paragraph 4(b), we recommend adding another bullet, which states the stop/slow paddle may be modified according to the MUTCD to incorporate flashing white lights.

**Department Response to Comment:**

- As written, the rule does not prohibit the use of approved stop/slow paddles that incorporate flashing white lights. Therefore, no change is necessary.

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### **Comment Received on this Subsection:**

- The rule does not mention flashing paddles. Are they no longer required on WSDOT projects?

### **Department Response to Comment:**

- These rules are minimum safety standards that must be followed by all affected employers in WISHA jurisdiction. They do not prohibit WSDOT from adopting more stringent requirements for its employees and contractors.

### **Comment Received on this Subsection:**

- All paddles should be 24" for better visibility.

### **Department Response to Comment:**

- The rule states that "sign paddles must be at least 18 inches in diameter." Nothing in the rule prohibits the use of sign paddles that are 24 inches in diameter. However, we do not at present have sufficient justification to adopt the larger size as a minimum requirement.

### **Comment Received on this Subsection:**

- Sign paddles for nighttime use, are they required to be retroreflective? I'd like to know if they are supposed to be reflectorized, illuminated, or are they retroreflective?

### **Department Response to Comment:**

- Sign paddles used during periods of darkness must be retroreflective or illuminated in the same manner as signs. We replaced the word "retroreflectorized" with "retroreflective".



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### Changes to the Rule (Proposed rule versus rule actually adopted):

- Based upon public comments, **WAC 296-155-305(4)** has been rewritten and adopted as follows:

(a) Flagger hand signaling must be ~~((either))~~ by sign paddles or lights approved by WSDOT. During emergency situations, red flags may be used to draw a driver's attention to particularly hazardous conditions. In non-emergency situations, a red flag may be held in a flagger's free hand to supplement the use of a sign paddle or lights.

(b) When sign paddles are used, they must comply with the requirements of MUTCD, ~~((1988))~~ 1995 Edition-Revision ~~((3))~~ 4, Part VI. Specifically, sign paddles:

- Must be at least 18 inches in diameter;
- Printed with letters at least 6 inches high;
- The "STOP" side of the paddle must have a red background with white lettering; and
- The "SLOW" side of the paddle must have an orange background with black lettering.

(c) When hand signaling is used during periods of darkness, sign paddles must be ~~((retroreflectorized))~~ retroreflective or illuminated in the same manner as signs.

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### AMENDED SUBSECTION: WAC 296-155-305(5)

**Reason for Adopting Rule:** State-initiated amendments are adopted to:

- Reorganize the subsection to clearly distinguish the minimum requirements for flagger safety garments and hard hats worn during "daylight hours," and "hours of darkness", including snow and fog conditions.
- Add ANSI/ISEA 107-1999 Class 2 specifications as the minimum requirement for high visibility safety garments worn by flaggers during daylight hours.
- Allow the use of mesh material for high visibility safety garments if they meet the chromatic specifications of ANSI/ISEA 107-1999.
- Add the requirement that the retroreflecting material on high visibility garments must encircle the torso of the garment providing 360 degrees of visibility.
- Identify acceptable colors for high visibility safety garments worn during daylight hours to be fluorescent yellow-green, fluorescent orange-red or fluorescent red.
- Identify acceptable high visibility colors for hard hats worn during daylight hours to be white, yellow, yellow-green, orange or red.
- Add specific coverall/trouser design and color requirements for flaggers working during hours of darkness.
- Add the requirement that a flagger working during hours of darkness must wear a high visibility hard hat "marked with at least 12 square inches of retroreflective material providing 360 degrees of visibility."
- Add a definition for "hours of darkness."
- Add high visibility safety garment requirements for flaggers working in snow and fog conditions.
- Add information telling interested parties where they can purchase or read a copy of ANSI/ISEA 107-1999.

### **Hearing Officer Correction:**

We have corrected an error in WAC 296-155-305(5)(a), which changes one of the acceptable colors for high visibility safety garments. The error correction changes fluorescent yellow-orange to fluorescent yellow-green.

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### **Comment Received on this Subsection:**

- In Paragraph 5(a) we would like to add words so it reads:

"The high visibility safety garment designed according to Class 2 or greater specifications in ANSI/ISEA 1077-1999, American National Standard for High Visibility Safety Apparel, Sections 5, 6, 4 and Appendix B."

"Specifically, a garment containing at least 775 square inches of background material and 201 square inches of retroreflecting material, encircling the torso, placed in a manner to provide 360 degree visibility to the wearer. The acceptable high visibility colors are fluorescent yellow/green, fluorescent orange/red, and fluorescent red.

### **Department Response to Comment:**

- Class 2 is the minimum specification requirement. Nothing prevents an employer, responsible contractor and/or project owner from exceeding these minimum expectations by requiring the use of high visibility safety garments designed to Class 3 specifications. However, we do not presently have sufficient justification to require the higher level garment.
- Although Sections 4, 5, and 6 and Appendix B of ANSI/ISEA 1077-1999 speak specifically to relevant color and design issue, there are other issues addressed elsewhere in the standard that are important so we believe that the complete standard should be referenced in the rule.
- "Retroreflective material" is the term defined in ANSI/ISEA 1077-1999 and used consistently throughout the standard.
- We agree with the recommendation regarding 360 degrees visibility and have added appropriate language to the rule.

### **Comment Received on this Subsection:**

- One concern is the lack of uniformity in regulations. The vests that are approved by WSDOT do not seem to meet the L&I standards at this time. In our company, we've actually had to go from one type of vest to another. On one job WSDOT said the vests met all of their specs and requirements, but then L&I said they were not approved. We had to provide something different at a cost to our company. The color of the hard hats in the WSDOT flagging rules could be white or yellow. In the L&I emergency rules, I think there's a variety of four to five different colors. I would like to see the hard hats remain white or yellow for all traffic control personnel.

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### **Department Response to Comment:**

- By statute, we are charged to make, adopt, modify and repeal rules and regulations to assure, as may be reasonably possible, safe and healthful working conditions for every man and woman working in the State of Washington under our jurisdiction. These rules set minimum requirements. If other agencies, such as WSDOT, chose to adopt standards that exceed these minimum requirements they may do so. WSDOT has not disagreed with the acceptable vest and hard hat colors included in this rule

### **Comment Received on this Subsection:**

- Regarding compliance with ANSI 1999, I've reviewed ANSI 1999 pretty thoroughly. When the permanent rules are adopted, I think it should also say "or latest revision." I have a feeling ANSI will be revising this. I've noticed a number of errors in ANSI.

### **Department Response to Comment:**

- The Office of the Attorney General has consistently advised us that we must cite the specific national consensus code and cannot use phrases such as "current edition" or "latest revision."

### **Comment Received on this Subsection:**

- Who bears the cost of the personal protective gear: hard hats, the vests, the rain gear, and what have you? Our company is providing it, but we do have subcontractors that do not provide the vests for their flaggers. They're requiring the flaggers to buy them and the flaggers don't want to buy them because they feel that the cost is prohibitive. The company employing the flagger should be responsible for the flagger's personal protective gear, not the contractor. This means the subcontractor should provide the appropriate gear.

### **Department Response to Comment:**

- PPE are items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers. Our rules require that employers must provide necessary PPE to employees, at no cost to the employee, if the PPE is the type that would not reasonably be worn away from the workplace.

### **Comment Received on this Subsection:**

- Sometimes we contract with City of Seattle police officers. It's very difficult to get them to put a hard hat on. They wear the mesh vest with the open sides that are blue and white with no reflective material on them that says "police." Are they going to come under the same rules as everybody else?

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### **Department Response to Comment:**

- MUTCD, Part VI, 6E-3 is very specific regarding the use of law enforcement officers as flaggers. There are no daytime high-visibility clothing requirements for law enforcement officers. During nighttime work and in low-visibility situations, a retroreflective garment, as described in 6E-3, should be worn.

### **Comment Received on this Subsection:**

- Amendments are all positive if enforced. My employer requires that we bring our PPE to safety meetings for inspection and provides replacement gear when necessary.

### **Department Response to Comment:**

- As noted by the comment, effective enforcement begins with the employer and others with direct responsibility for the work site. In addition, we will inform all of our relevant personnel of the new flagger rule requirements and provide them with appropriate training. We are also increasing the number of WISHA safety inspectors who have attended flagger certification classes. In the spirit of voluntary compliance, we would encourage all employers to do the same.

### **Comment Received on this Subsection:**

- Is an orange flagging vest prohibited? This statement would not allow the yellow or orange garments accepted by MUTCD 6E-3. Also, I agree with your error correction.

### **Department Response to Comment:**

- The colors cited in the rule are compatible with MUTCD, Part VI, 6E-3 requirements. Yellow or orange vests are acceptable if they meet ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel Class 2 design specifications.

### **Comment Received on this Subsection:**

- I would really like this statement to specifically require a garment containing a minimum of 230 square inches of retroreflective material as measured on a medium-sized vest. All components of the vest must provide 360 degrees of visibility and the reflective material visible from a minimum of a thousand feet. With this wording, the garments would also meet the DOT specs.

### **Department Response to Comment:**

- WAC 296-155-305(5) states the minimum requirements for high visibility safety garments and hard hats. If an employer, responsible contractor and/or project owner wishes to exceed those minimum requirements, they may do so. However, we do not currently believe that it is necessary to require all employers to meet the specifications required by the WSDOT on its job sites.

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### **Comment Received on this Subsection:**

- We disagree with the arbitrary number of 775 square inches of material around the background. What you're creating is an extremely large garment made just for extremely large people. Take that same garment and put it on someone who is of smaller stature and you've got a very loose, unfitting garment. When you read the safety standards for construction, they'll tell you that large, poorly fitting garments are unsafe. We want to base this requirement on a medium-sized garment. As far as the retroreflective material we have no problem with the 201 square inches of retroreflective material.

### **Department Response to Comment:**

- 775 square inches is not an "arbitrary number," it is the minimum area of visible material required by ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel for a Class 2 garment (see Table 1 Minimum areas of visible material). We believe that the 775 square inch requirement can be met on a medium size vest that will fit comfortably and safely on a flagger of medium stature.

### **Comment Received on this Subsection:**

- In the summertime you ought to allow for mesh material. We already have a requirement that employees wear a shirt and now they have to wear this garment that doesn't provide for breathing. For extreme weather conditions, I think you need to consider the addition of mesh material or a type of material that would be cooler.

### **Department Response to Comment:**

- We agree and have added language that allows the use of mesh material for high visibility safety garments if the material meets the chromaticity requirements of ANSI/ISEA 107-1999.

### **Comment Received on this Subsection:**

- This will have a large economic impact for many employers since many employers use an orange warning garment. WSDOT has employees still using the orange vest from two versions back. There should be a "grandfather" date allowing garments that are out of color compliance or less than a Class 2 garment to be worn until the specified date. The Class 2 specification lists a minimum amount of background material and retroreflective material. Meeting these requirements will have an economic impact for some employers who have purchased rather skimpy, but legal, garments recently.

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### Department Response to Comment:

- We believe that the color and Class 2 requirements are necessary to meet the Legislature's mandate, which was to improve flagger safety by revising safety standards governing flaggers. We believe replacing outdated and "skimpy" garments is a relatively inexpensive proposition, especially when compared to the risks wearing those garments pose for flaggers.

### Comment Received on this Subsection:

- Recommend that:
  - ✓ All flaggers must wear a Class 3 flagging vest during hours of darkness;
  - ✓ The regulations continue to require flaggers' coveralls and trousers to be of a high visibility color as referenced in WAC 296-155-305(5)(a); and
  - ✓ The requirement for clothing to meet the ANSI/ISEA 107-1999 Standard be deleted.

Increasing the class of the flagging vest from 2 (two) to 3 (three) will provide enhanced visibility during hours of darkness. Increasing the requirement of high visibility coveralls and trouser colors as referenced in WAC 296-155-305(5)(a) will provide further enhanced visibility without causing an unreasonable expense of having these garments certified just to meet the requirements of that (ANSI/ISEA) standard.

### Department Response to Comment:

- The Class 2 requirement is a minimum requirement. Employers, responsible contractors and/or project owners can require a Class 3 garment if they wish. However, we do not currently believe that requiring Class 3 garments during the hours of darkness is appropriate as part of this minimum standard.
- We have added a requirement that non-white coveralls or trousers designed according to ANSI/ISEA 107-1999 standards must have retroreflective banding on the legs.
- ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel is a highly recognized consensus code on the subject of high visibility safety garments and to delete from the rule would weaken it and run contrary to the charge of the Legislature and our statutory mandate to improve flagger safety.

### Comment Received on this Subsection:

- Add the words "or greater" after the reference to Class 2.
- In the next paragraph, which reads "A high visibility hard hat that is marked with at least 12 square inches of retroreflective material, providing 360 degrees of visibility" add, "i.e., at least three square inches on all four sides of the hard hat." This will provide 360 degrees of reflectivity.

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### Department Response to Comment:

- The Class 2 requirement is a minimum requirement and Class 3 garments meet it. Employers, responsible contractors and/or project owners can require a Class 3 garment if they wish.
- We added the words "applied to" to clarify our intent regarding 360 degrees of visibility.

### Comment Received on this Subsection:

- Recommend:
  - ✓ A Conspicuity Class 3 rain gear ensemble meeting ANSI/ISEA 107-1999 as an alternative when a flagging vest is not being worn.
  - ✓ When a Class 3 vest is used, we recommend continuing to require that the rain gear be of a high visibility color but remove the requirement that the rain gear meet the ANSI/ISF-A 107-1999 Standard.

Currently we are using high visibility orange rain gear that is required to be flame retardant (WAC 296-45-325), but it has not been tested or certified to meet ANSI/ISEA 107-1999. It is an unreasonable expense for us to purchase new rain gear just because our current high visibility rain gear is not certified. Further, requiring a short-term flagger to change clothing at an outside job site is unreasonable.

If the State of Washington continues to require this clothing meet the ANSI/ISEA 107-1999 Standard, we respectfully request that there be a phase-in period not to exceed two years. Manufacturers must make available the necessary products with the flame retardancy **included** in the testing to meet the requirements of WAC 286-305 and 296-45-325. The phase-in period would allow employers to use up current stock before requiring employers to replace it, thus reducing the expenses of unnecessarily replacing it immediately.

### Department Response to Comment:

- The Class 2 requirement is a minimum requirement and Class 3 garments meet it. Employers, responsible contractors and/or project owners can require a Class 3 garment if they wish.
- Regarding the color of rain gear, we have adopted rule language that responds to your concern.
- The high visibility requirements in this rule apply to flaggers. Flaggers are not required, by this rule, to wear FR rain gear.



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### **Comment Received on this Subsection:**

- When we talk about flagging vests, it's pretty clear, the colors and the reflectivity. I don't understand when you're talking about rain gear why you just can't say what colors are acceptable. Also there should probably be some reflectivity required for rain pants. Counties are in the process of buying rain pants, or rain gear, for our crews to work at night. We would like to go with orange or fluorescent orange rain gear with reflectivity on the pants and the jacket. What's holding us back on is trying to clarify exactly what we are required to do.

### **Department Response to Comment:**

- We have adopted rule language that responds to your concern.

### **Comment Received on this Subsection:**

- We are concerned about the safety of employees wearing white coveralls during hours of darkness in inclement weather. The proposed standard cites ANSI/ISEA 107-1999 regarding this issue. We find the ANSI standard to be difficult to understand and recommend addressing the specific criteria for color, visibility and reflectivity in the regulation. It is our recommendation that any bright color of coveralls be allowed during inclement weather including yellow, orange and white.

### **Department Response to Comment:**

- We have adopted rule language that responds to your concern.

### **Comment Received on this Subsection:**

- Yellow rain gear should be kept in, not deleted.

### **Department Response to Comment:**

- We added language to allow yellow or orange rain pants with retroreflective banding on the legs if they meet ANSI/ISEA 107-1999 REQUIREMENTS.

### **Comment Received on this Subsection:**

- If you look out the window today, white snow and low visibility. You're asking us to put our employees in a white garment against a white background. I don't feel that that's the intent of the regulation.

### **Department Response to Comment:**

- We agree and have adopted rule language that responds to your concern.

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### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(5)** has been rewritten and adopted as follows:

- (a) While flagging during daylight hours, a flagger must, at a minimum, wear:
- A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel. Specifically, a garment containing at least 775 square inches of background material and 201 square inches of retroreflective material that encircles the torso and is placed to provide 360 degrees visibility around the flagger. The acceptable high visibility colors are fluorescent yellow/~~green~~ (~~orange~~), fluorescent orange/red or fluorescent red; and
  - A high visibility hard hat. The acceptable high visibility colors are white, yellow, yellow-green, orange or red.
  - When snow or fog limit visibility, a flagger must wear pants of any high visibility color other than white.
- (b) While flagging during hours of darkness, a flagger must at least wear:
- A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel over white coveralls, or other coveralls or trousers that have retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 standards; and
  - A high visibility hard hat that is marked with at least 12 square inches of retroreflective material applied to provide (~~ing~~) 360 degrees of visibility.
  - For the purpose of this rule, "hours of darkness" means one-half hour before sunset and one-half hour after sunrise.
  - When snow or fog limit visibility, pants, coveralls, or rain gear in a highly visible color with retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 must be worn.

**Note:** High visibility safety garments made of mesh material may be worn by flaggers if they meet the chromaticity requirements of ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel.

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~~((c) During inclement weather, white rain gear or rain gear designed according to ANSI/ISEA 107-1999 may be substituted for white coveralls.))~~

**Note:**

- You may purchase copies of ANSI/ISEA 107-1999 by writing:  
American National Standards Institute  
11 West 42<sup>nd</sup> Street  
New York, NY 10036  
  
Or  
Contacting the ANSI web site at:  
<http://web.ansi.org/>
- You may read a copy of ANSI/ISEA 107-1999 at any Washington State library.

### AMENDED SUBSECTION: WAC 296-155-305(6)

**Reason for Adopting Rule:** State-initiated amendments are adopted to:

- Update MUTCD reference and WSDOT pamphlet reference.
- Replace "qualified person" with "certified flagger".
- Add a definition of "emergency."

**Comment Received on this Subsection:**

- WAC 296-155-305(6) is "ok."

**Department Response to Comment:**

- Comment does not require a response.

**Comment Received on this Subsection:**

- Very concerned about the safety of flaggers, employees and the public during hazardous times. Our employees are well trained and provided with good equipment to assist them under these conditions. We believe that the experience of our workforce and the equipment available on our trucks are adequate for creating a safe work zone during such times. Having to wait for qualified flaggers and equipment necessary to comply with the proposed standard puts our employees and the public at greater risk. We ask that an emergency exemption be adopted for these types of situations.

**Department Response to Comment:**

- We have deleted the proposed language and replaced it with a definition of "emergency."

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**Changes to the Rule** (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(6)** has been rewritten and adopted as follows:

- (a) Each flagger must be trained every three years.
- (b) Flagger training must be based upon the Manual on Uniform Traffic Control Devices-  
((1988)) 1995 Edition-Revision 4, Part VI, as amended by the Washington State department of  
transportation pamphlet, "Washington State Modifications to the MUTCD." (M 24-01)
- (c) Personnel that have not completed a flagger-training course may be assigned duties as  
flaggers only during emergencies when a sudden, generally unexpected, set of circumstances  
demands immediate attention. Such emergency assignments are temporary and last only until a  
((qualified person)) certified flagger can be put into the position. For the purpose of this rule,  
"emergency" means an unforeseen occurrence endangering life, limb, or property.

### AMENDED SUBSECTION: WAC 296-155-305(7)

**Reason for Adopting Rule:** State-initiated amendments are adopted to add:

- A specific reference to the Washington traffic control flagger card.
- Language recognizing flagger certification reciprocity agreements between Washington and other states.
- Language identifying what information must be shown on the flagger certification card.

**Comment Received on this Subsection:**

- WAC 296-155-305(7) is "ok".

**Department Response to Comment:**

- Comment does not require a response.

**Comment Received on this Subsection:**

- Both paragraphs are positive.

**Department Response to Comment:**

- Comment does not require a response.

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### **Comment Received on this Subsection:**

- In paragraph 7(b), we would like to see the following added so the flagger's card shows the:
  - ✓ State which authorized the issuance of the card,
  - ✓ Date the flagger received the flagger training,
  - ✓ Name of the instructor providing the training,
  - ✓ Card's expiration date, and
  - ✓ Flagger's picture or a statement that says "valid with photo ID."

These items are currently required on the Washington State Certification Card.

### **Department Response to Comment:**

- We agree and have added the necessary bullets. This will make it easier for employers, responsible contractors and/or project owners to recognize valid flagger cards and, therefore, voluntarily comply with this requirement.

### **Comment Received on this Subsection:**

- All current Washington State flagging cards, and those from most of the reciprocity states, do not meet this standard. All cards in stock will have to be discarded. Without a "grandfather" clause, current cardholders will have to replace cards. This will be an administrative nightmare and have an economic impact.

### **Department Response to Comment:**

- We will accept current cards until they expire. New flagger certification cards and flagger re-certification cards issued after the effective date of this rule must comply with this requirement.

### **Comment Received on this Subsection:**

- Current cards only say that the flagger was trained in basic knowledge and information. Current cards don't reference the MUTCD. Do they need to? Are they now invalid because they don't reference the MUTCD?

### **Department Response to Comment:**

- We will accept current cards until they expire. New flagger certification cards and flagger re-certification cards issued after the effective date of this rule must comply with this requirement. However, the standard does not specifically require the card to reference the MUTCD.

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### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(7)** has been rewritten and adopted as follows:

(a) Each flagger must have in their possession either a valid Washington traffic control flagger card or a valid flagger card from a state, such as Oregon, Idaho or Montana, having flagger training reciprocity with Washington.

(b) The flagger card must show the following:

- Verification that the flagger training prescribed in subsection (6) of this section is completed; ~~((and))~~
- Date the flagger received their flagger training;
- Name of the instructor providing the flagger training;
- Name of the state that issued the flagger card;
- The card's expiration date; and
- Flagger's picture or a statement that says "valid with photo ID."

### AMENDED SUBSECTION: WAC 296-155-305(8)

**Reason for Adopting Rule:** State-initiated amendments are adopted to add:

- A new subsection to comply with Chapter 239, Laws of 2000 requiring "employers, responsible contractors and/or project owners" to use a performance- based approach when developing and using methods to provide flaggers with adequate warning of equipment approaching from behind.
- Language to clarify the department's interpretation of Chapter 239, Laws of 2000 statutory requirements.
- Some **non-mandatory** examples of methods that can be used to adequately warn flaggers of equipment approaching from behind.
- Language clarifying the department's position that neither training nor standard backup alarms (which are already required on construction equipment) are sufficient methods of complying with the intent of chapter 239, Laws of 2000.

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### **Comment Received on this Subsection:**

- This section is too general and does not ensure that flaggers have adequate visual warning as required by ESHB 2647. Are backup alarms not sufficient just because they are already required? These are already one method of warning a flagger and possibly the most effective method. No one at the public hearing had any proposed examples to adequately warn flaggers. This section should be removed from the standard.

### **Department Response to Comment:**

- Chapter 239, Laws of 2000 (ESHB 2647) states that permanent rules "shall be designed to improve options available to ensure the safety of flaggers...(and)...ensure that flaggers have adequate visual warning of objects approaching from behind them." This broad, performance based language giving employers, responsible contractors and/or project owners leeway in developing adequate visual warning methods for flaggers. The comment regarding the public hearing is inaccurate, given that the proposed standard itself suggests some **non-mandatory** examples of methods that may be used to protect flaggers.
- We disagree with the conclusion that back-up alarms are the most effective means to protect flaggers – and the statute clearly requires us to improve options; declaring that the existing standard is an adequate method would violate legislative intent. Removal of this section from the standard would clearly violate the legislative requirement.
- We have added language regarding the proper placement of work zone flaggers that, when it can be followed, will make the need for additional options unnecessary.
- We believe the rule, as adopted, complies with both the letter and intent of ESHB 2647.

### **Comment Received on this Subsection:**

- I would like to have some clarification. How much license do I have in developing methods for rear warning? Looking at the non-mandatory examples, I have some other ideas from our safety meetings. I'd like to know how much free rein I have in developing methods and to whom I would respond.

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### Department Response to Comment:

- The language in the statute is broad and performance-based, giving employers, responsible contractors and/or project owners leeway in developing adequate visual warning methods for flaggers. We have suggested some **non-mandatory** examples of methods that may be used to protect flaggers but if you have developed other methods that you think will work, you should try them. The list of methods is not all-inclusive.
- The rule does not require that you report your efforts to anyone. However, we would appreciate hearing of any innovative approaches to flagger safety so that we can share them with others as opportunities arise; you can provide such information to Lou Flores by e-mail at [FLOS235@lni.wa.gov](mailto:FLOS235@lni.wa.gov) or by writing him at P.O. Box 44650, Olympia, WA 98504-4650.

### Comment Received on this Subsection:

- Flagging stations should be outside the workspace. If the workspace and flagging locations are properly identified during the job site orientation there should be no need for paragraph (8). See MUTCD 6C-2 for workspace definition and 6C-5 for flagger location. WAC 296-155-305(8) is unnecessary if proper flagging procedures are followed.

### Department Response to Comment:

- Both MUTCD 6C-2 and 6C-5 speak to traffic control but do not address the issue of protecting a flagger from "objects approaching them from behind." MUTCD 6C-2 states that "work space is that portion of the roadway closed to traffic and set aside for workers, equipment, and material." It is the equipment, as well as traffic, from which the flagger needs protection. It is the intent of the rule to remind employers, responsible contractors and/or project owners of that threat to flagger safety and provide some suggested methods of protection.
- The language we have added complies with MUTCD 6C-2 and 6C-5 and, when it can be followed, will minimize the need for additional options.



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### **Comment Received on this Subsection:**

(Note: The following comment represents the sentiment of a number of people who testified during the public comment period.)

- Remove: Note: The following are some non-mandatory examples of methods that may be used to adequately warn flaggers:
  - Mount a mirror on the flagger's hard hat
  - Use a motion detector with an audible warning
  - Use a Spotter."

**Reason:** Relying on gadgets does not remove hazards and does not guarantee incident prevention.

### **Department Response to Comment:**

- We believe that the intent of ESHB 2647 requires the department, other agencies, employers, and workers to move beyond the status quo and do more to improve flagger safety.
- We do not view the suggested non-mandatory methods as "gadgets" but legitimate means for complying with the statute's intent. For example, the use of mirrors in automobiles is well established as a means to improve an appropriately trained driver's visual awareness of objects behind the driver without forcing him or her to look away from the road ahead. The suggestions in the rule are non-mandatory and do not restrict employers, responsible contractors and/or project owners from developing options that give flaggers "adequate visual warning of objects approaching from behind them." If employers, responsible contractors and/or project owners develop such options then the hazard will be removed.
- The option suggested by many that commented is that we should rely almost exclusively on training. However, the well-established hierarchy of controls in occupational safety and health recognizes that methods that rely entirely on employee behavior are inherently less reliable than methods of protection that rely on appropriate engineering controls and design or working environments.

### **Comment Received on this Subsection:**

- We have been putting mirrors on our signs for quite a while and, contrary to everybody else in this room, gotten positive feedback from our flaggers about them. When we put a mirror on a flagger's sign, we tell them that it's not something that you need to look into all the time. It's just there so that you can notice possible movement behind you. We don't expect them to stare into the mirror. Nobody has complained of glare in their eyes or noticeable glare to the public. There are at least two mirrors on almost every car. How many vehicle accidents are actually caused by glare from mirrors from another car?

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### Department Response to Comment:

- Comment does not require a response.

### Comment Received on this Subsection:

- We suggest adding the following as another non-mandatory example:

"Conduct regularly scheduled flagger safety meetings on the job site, which focus on the approved traffic control plan; implement measures to ensure that proper flagging methods and safe flagger stations are an integral part of current work operations."

This type of safety planning is consistent with WSDOT's existing approved traffic control plan requirement for flagger stations. We maintain that implementing regular flagger safety meetings on the site or site-specific work zone safety plans for all flaggers on the job will be more effective than relying on a singular method that might provide a false sense of security.

The proposed WAC 296-155-305(8) is too narrowly focused on the use of some singular method to save the flagger. This approach fails to address the broader flagger safety issues associated with the flagger's station location and the flagger's function as an integral part of a work zone operation. The listed examples should be used as secondary measures to supplement a well thought-out, safe traffic control plan, which includes the flagger station.

### Department Response to Comment:

- The methods listed in WAC 296-155-305(8) are suggested **non-mandatory** examples. Nothing prohibits an employer, responsible contractor and/or project owner from implementing other methods that they think will effectively provide flaggers with "adequate visual warning of objects approaching from behind them." However, having regular meetings about safety issues, while worthwhile, will not represent compliance with the rule unless the meetings actually result in implementation of methods to provide flaggers with such warnings.

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### **Comment Received on this Subsection:**

- The spotter should only be considered if all other measures are determined to be ineffective and any potential hazards to the spotter are outweighed by the hazards to the flagger or other exposed workers.

### **Department Response to Comment:**

- Using a spotter is just one of the suggested **non-mandatory** methods listed in the rule. If an employer, responsible contractor and/or project owner does not choose to use a spotter because other methods are more effective and appropriate, that is within their discretion.

### **Comment Received on this Subsection:**

- Spotters, I think, in some situations are a good idea. However, we've been on several projects where WSDOT said they would rather take a fine than pay for spotters. That kind of leaves us in a bind as far as if we need spotters here and there.

### **Department Response to Comment:**

- The employer and other responsible individuals must ensure that employees are protected. While spotters are only one optional method of compliance, if an employer or project owner willfully refuses to comply with the requirement because of cost, the WISHAct establishes a penalty up to \$70,000 for a single violation.

### **Comment Received on this Subsection:**

- I'm opposed to the mirrors. I think that the flagger needs to take some responsibility. They are trained. They have a certification. They shouldn't be in a position where they can get hit from behind. The mirrors are a really bad idea.

### **Department Response to Comment:**

- Using a mirror mounted on a hard hat is just one of the suggested **non-mandatory** methods listed in the rule. If an employer, responsible contractor and/or project owner believes that "mirrors are a really bad idea" and chooses not to use them, that is their decision. However, they must comply with the requirement using another method. Employers are responsible under the law for the safety and health of their workers, whether those workers have been trained or not. And the hazards of an already designed work site that requires a flagger to stand between traffic and moving construction equipment cannot be overcome by a flagger's training and individual responsibility.

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### **Comment Received on this Subsection:**

- If flaggers were following to the letter their flagging class training, they would very seldom have their back to any kind of traffic. I realize it's a bad thing when somebody gets run over from behind. I think it is usually the fault of the person who got injured or killed because they weren't paying attention. I think it is our responsibility, the supervisors and managers, to make sure that our people know the rules, know how they're supposed to be positioning themselves, and to watch them to make sure that they do that.

### **Department Response to Comment:**

- We disagree that injuries and deaths are usually the result of inattentive workers. It is a general and well-established principle in occupational safety and health that solutions relying upon individual employee behavior for their efficacy should be avoided in favor of solutions where the price of “inattention” is not serious injury or death. We do agree that employers, responsible contractors and/or project owners have a responsibility to make sure that their employees know these rules and are positioned properly when flagging. The language we added to WAC 296-155-305(8) should help them carry out that responsibility.

### **Comment Received on this Subsection:**

- This whole section makes no sense. It gives you three things to try. They are not required, but you have to do something. It seems to me that training and having flaggers pay attention to what they are supposed to do is what is going to work.

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### Department Response to Comment:

- An excessive reliance upon individual employee training and “paying attention” rather than well-designed work sites and appropriate engineering methods is dangerous, as experience in road and highway construction industry suggests. It is true that the rule requires that some action be taken to comply with the rule, although the specific measures suggested are only a few options among many. We have added a fourth suggested **non-mandatory** method, jersey barriers. We believe that these options can be used effectively to achieve the intent of ESHB2647. However, employers, responsible contractors and/or project owners are free to develop other options that they think will provide flaggers with "adequate visual warning of objects approaching from behind them."
- We added language regarding the proper placement of work zone flaggers that, when it can be followed, will make the need for additional options unnecessary.
- We added language to WAC 296-155-305(8) acknowledging the importance of adequately trained flaggers and our support of efforts to improve the quality of flagger training. However, we continue to maintain that training alone does not comply with sound principles of occupational safety and health or with the statutory mandate to revise flagger safety standards to include options that ensure flaggers have adequate visual warning of objects approaching from behind them.
- It is the responsibility of the employer, responsible contractor and/or project owner to ensure that all work zone employees are protected when they perform their assigned tasks.

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### **Comment Received on this Subsection:**

- We have a method. We have backup alarms. So they put in the rule that backup alarms don't count. You took that method away from us. This says that backup alarms are good enough for everybody on the job site except the flaggers. Backup alarms are one method and if we ensure that it is in place and working, it should count. It should not be discounted.

### **Department Response to Comment:**

- Backup alarms are still required on construction sites. They have not been taken away. They are required for the protection of all work zone employees, including flaggers. However, we believe that standard backup alarms, which are already required on construction equipment, are not sufficient protection in and of themselves (particularly in many construction settings where a variety of back-up alarms can be heard almost continuously). Further, they do not meet the intent of the Legislature "to improve options available to ensure the safety of flaggers...(and)...ensure that flaggers have adequate visual warning of objects approaching from behind them." We believe that the intent of the statute directs us to go beyond the status quo in our effort to increase flagger protection.

### **Comment Received on this Subsection:**

- "Adequate warning" is a very broad term. It allows a lot of discretion to the contractor and the enforcement officer. Is verbal discussion and warning at the orientation adequate warning? It should be if it does the job. The bottom line is to provide as safe a workplace as possible for flaggers, no matter how we get there.

### **Department Response to Comment:**

- It is unclear to us how verbal discussion at an orientation would provide flaggers "with adequate visual warning of objects approaching from behind them." While broad, the term is simply not *that* broad. Unless the orientation can inform flaggers exactly when objects will be approaching them from behind, it clearly fails to meet the letter and intent of both the standard and the legislation. The goal is indeed to provide as safe a workplace as possible; however, suggesting that flaggers can be warned of immediate hazard by an orientation received hours or days previously does not meet that test.

### **Comment Received on this Subsection:**

- In the standard there's a reference to training as not being an acceptable solution to the problem. We disagree with the concept that training alone is not a sufficient method to comply with the rule. We recognize that the current training standards are grossly insufficient. However, we are firmly convinced that thorough, proper training is one of the primary solutions to this problem and we should not disregard it.

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### **Department Response to Comment:**

- We have not disregarded the importance of training. We have, however, rejected the excessive reliance on training as a solution in and of itself reflected in many of the comments we received. It is a fundamental and well-established principle of occupational safety and health that safety measures that rely primarily on individual behavior for their efficacy should be avoided when more reliable methods are available. And it is a simple fact of physiology that employees cannot look in two directions at once without technical assistance of some kind, regardless of the level of training they have been provided. We added language that clarifies our commitment to training and reiterates our belief that ESHB 2647 requires the permanent rules to go beyond the status quo and beyond training alone in our effort to improve flagger safety.

### **Comment Received on this Subsection:**

- The statement in the rule about "training alone is not sufficient" is confusing. What is sufficient? The meaning of this statement is not clear and seems to downplay the importance of training. It needs to be clarified.

### **Department Response to Comment:**

- The language correctly downplays the importance of training *alone*. We added language that we believe clarifies our intent regarding training and the requirements imposed upon us by ESHB 2647.

### **Comment Received on this Subsection:**

- Does this pertain to job sites where there is heavy equipment moving around in addition to vehicular traffic? Or is it all inclusive for every flagging situation, even where there is no equipment or traffic approaching the flagger from behind (low speed, low traffic flow street)?

### **Department Response to Comment:**

- The purpose of this rule is to satisfy the mandate of ESHB 2647 by improving flagger safety in a variety of ways. It applies to all situations under our jurisdiction, where a flagger is at risk from all work zone traffic and moving equipment, especially vehicles and equipment in the work zone approaching the flagger from behind. If there is no risk of vehicles or equipment approaching the flagger from behind, no further action is required.

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### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(8)** has been rewritten and adopted as follows:

When it is not possible to position work zone flaggers so they are not exposed to traffic or equipment approaching them from behind, ((T)) the employer, responsible contractor and/or project owner must develop and use a method to ensure that ((~~whenever there is any potential hazard associated with construction equipment that~~)) flaggers have adequate warning of such traffic and equipment approaching from behind the flagger.

Note: The following are some **non-mandatory** examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat.
- Use a motion detector with an audible warning
- Use a spotter
- Use "jersey" barriers

~~((Regardless of the method chosen, employees must be trained.))~~ The department recognizes the importance of adequately trained flaggers and supports industry efforts to improve the quality of flagger training. However, training alone is not ((a)) sufficient to comply with the statutory requirement of revising flagger safety standards to improve options available that ensure flagger safety and that flaggers have adequate visual warning of objects approaching from behind them. ((method for complying with this rule.)) ((Also)) Likewise, the department believes that standard backup alarms, which are already required on construction equipment, do not meet the intent of the Legislature on this issue. ((and, therefore, are not a sufficient method for complying with this rule.))

### AMENDED SUBSECTION: WAC 296-155-305(9)

**Reason for Adopting Rule:** State-initiated amendments are adopted to add a:

- New subsection requiring "employers, responsible contractors and/or project owners" to:
  - ✓ Conduct flagger orientations on the job site. The subsection specifies the minimum content of the orientation and the conditions under which it must be conducted.
  - ✓ Keep a current site-specific traffic control plan on-site at certain jobs where flaggers are used. Specifically, a traffic control plan is required for jobs that last more than one day. The subsection also specifies the purpose of the traffic control plan and its minimum content.



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### **Comment Received on this Subsection:**

- WAC 296-155-305(9) is "ok".

### **Department Response to Comment:**

- Comment does not require a response.

### **Comment Received on this Subsection:**

- Both (9)(a) and (b) are positive. Sometimes the contractors don't think the flagger needs to know about the entire scope of the work on site. Generally, the better informed a flagger is the better equipped they are to handle unforeseen events during the day.

### **Department Response to Comment:**

- Comment does not require a response.

### **Comment Received on this Subsection:**

- In 9(a), you say that the employer, responsible contractor, and/or project owner must conduct an orientation and that the orientation must include but is not limited to:
  - ✓ The flagger's role and location on a job site. Our response is that the employer should not be deciding this. The flagger doing the job should be trained well enough and understand traffic control well enough to know their own role and their best location on the job site or the location that the MUTCD would direct them take.
  - ✓ Motor vehicle and equipment operation on a job site is clearly the responsibility of the employer.
  - ✓ Job site traffic patterns. This should be the responsibility of the people conducting traffic control, not the employer.
  - ✓ Communications and signals to be used between flaggers and equipment operators are the responsibility of the people conducting traffic control, not the employer. If there is some unique and different signals to be used between the flaggers and the equipment operators that is a combined responsibility.
  - ✓ On foot escape route. The escape route is the responsibility of the flagger doing traffic control. They should establish their escape route.
  - ✓ Other hazards specific to the job site are clearly the responsibility of the employer.

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### **Department Response to Comment:**

- We believe that the employer, responsible contractor and/or project owner are responsible for ensuring that orientations take place and at least cover the topics listed. For example, to suggest that the employer, responsible contractor and/or project owner can abdicate responsibility for the flagger's location, or the signaling methods used to communicate with equipment operators, to the flagger disregards the reality that the work site design may already be completed and that the flagger may therefore be forced to choose between his or her own safety and that of the motoring public. No flagger, however well trained, should ever be expected to make such a choice; it is the responsibility of the employer, responsible contractor and/or project owner to ensure that employees, including flaggers, are able to perform their duties safely and effectively.

### **Comment Received on this Subsection:**

- The employer, responsible contractor and /or project owner should not be required to conduct an orientation for jobs lasting less than one day. Many of our jobs last one (1) to three (3) hours and are on roadways that have very light traffic. This is an unneeded use of time that will not insure a greater level of safety to the flagger.

### **Department Response to Comment:**

- The requirement does not specify how long the orientation must take. The length of time will vary depending on the number of flaggers involved, the complexity of the job and the nature of the job site. Some orientations will take less time than others. Regardless of the time spent, if the orientation is properly conducted and results in fewer injuries and deaths among flaggers, it is worth it.

### **Comment Received on this Subsection:**

- The orientation is a good idea but it should be performed by a qualified or a competent person not just someone on the project. Again, I think it's an excellent idea to do the orientation. One problem that we've had with traffic control on construction sites is that you end up with someone in traffic control that has absolutely no experience with it.

### **Department Response to Comment:**

- We agree that someone who is knowledgeable and experienced with traffic control on construction sites should conduct the orientation, although it is the responsibility of the employer, responsible contractor and/or project owner to make sure that the orientation achieves the intended purpose.

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### **Comment Received on this Subsection:**

- We recommend that the first bullet in 9(a) include a requirement to comply with an improved traffic control plan. The bullet should read as follows: "The flaggers role and location on the job site in conformance with the site-specific traffic control plan."

### **Department Response to Comment:**

- WAC 296-155-305(9)(a) states that "the orientation must include, but is not limited to." If an employer, responsible contractor and/or project owner wishes to include the requirement a reference to a site-specific traffic control plan, they may do so. The rule is stating a minimum requirement, which employers, responsible contractors and/or project owners may exceed if they so choose. Since such plans are not required in all circumstances, it would be inappropriate to require that they be addressed in all orientations.

### **Comment Received on this Subsection:**

- You should remove the 45-mile-an-hour speed limit and the one-day criteria. The paragraph should be revised to read as follows:

"When flaggers are used on a job site on a roadway, the employer, responsible contractor, and/or project owner must keep on-site current site specific traffic control plan."

The requirement for an approved traffic control plan must apply to all work zones and should not be dependent on speed and duration, if the permanent rule's goal is to increase safety protection for all flaggers. The proposed rule allows, without requiring a site specific traffic control plan, using flaggers on high-speed roadways where the job site moves slightly from day to day. Also, speeds below 45 miles per hour do not necessarily mean that a job site is less complex or safer than a job where speeds are greater than 45 miles per hour. Hazards still exist and need to be addressed as part of an approved traffic control plan. All flaggers need to be covered under this rule.

### **Department Response to Comment:**

- We agree to remove the speed limit condition but believe that the "more than one day" requirement is appropriate to address particular working conditions; however, we have removed the word "site" so that it is clear that a slight adjustment in the location of an ongoing construction job does not relieve an employer, responsible contractor, and/or project owner from the responsibility of a site specific plan.

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### **Comment Received on this Subsection:**

- The majority of our work is accomplished over a short duration and in many locations throughout our service area. Developing a written site specific traffic control plan for each location would pose an unreasonable burden on our field crews. We support the requirement for a current site specific traffic control plan on jobs greater than one day in duration or on roads allowing 45 mph or greater. We recommend that the proposed WAC 296-155-305(9)(b) be retained as written.

### **Department Response to Comment:**

- Based upon public comments, we have deleted the speed limit requirement but retained the "more than one day" requirement.

### **Comment Received on this Subsection:**

- Regarding site specific plans for every project. When plans are required on larger projects, the TCS does see that the traffic control plan is implemented for that project. When there is no TCS, who is responsible for implementing the plan and making sure everything is set up?

### **Department Response to Comment:**

- The rule states that "the employer, responsible contractor and/or project owner must keep on site, a current site specific traffic control plan." Those are the parties responsible for seeing that the plan is implemented. How they do it is up to them.

### **Comment Received on this Subsection:**

- A lot of our jobs require traffic control plans designed by our customer service representatives. Permits have to be done with city, state, or county agencies. Those traffic control plans are submitted to those agencies for approval prior to work starting. Our guys get on the job site and set it up according to those plan requirements. They have been trained to read those requirements and implement our traffic control plan.

The proposed regulation says that a person has to be on site for certain jobs. We are not strictly a traffic control company but we do have work that requires traffic control plans. We feel that this kind of ties us up for some of those jobs. For our larger jobs we do hire companies that specialize in traffic control plans. For those larger jobs where we do hire traffic control companies, we feel that it would be their responsibility and not the employer's responsibility for those plans.

### **Department Response to Comment:**

- The requirement states that "the employer, responsible contractor and/or project owner must keep on site, a current site specific traffic control plan." It does not require a specific person to be on site.

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### **Comment Received on this Subsection:**

- Cities have different requirements with many different interpretations. They should all be uniform. DOT rules require standard K plans. They should all be uniform and sufficient. Utility zones are very different from DOT jobs. These differences should also be addressed.

### **Department Response to Comment:**

- These rules represent minimum standards for all employers in Washington. We cannot, however, dictate a uniform set of rules. We believe that the rule should allow enough flexibility so various jurisdictions can meet the needs of the customers they serve. We believe that the rule as adopted does recognize the special circumstances surrounding many utility jobs.

### **Comment Received on this Subsection:**

- WAC 296-155-305(9)(b) includes bullets that are not necessary on all work sites lasting over a day. These include application and removal of pavement markings, construction, scheduling, maintenance of devices, traffic regulations, surveillance and inspection. These seem to come from WSDOT and could be needed on projects where they are the project owner but are not relevant to our projects. If WSDOT wants these requirements on their projects, that should be left up to them, but should not be required by other entities completing work on roadways not controlled by WSDOT.

### **Department Response to Comment:**

- The intent of the requirement is to make sure that the sit-specific traffic control plan addresses specific elements related to moving traffic through or around a construction zone. If those elements do not apply to your construction zone, they do not have to be included in your traffic control plan. The rule has been clarified to reflect this.

### **Comment Received on this Subsection:**

- To say that the requirements are different if less than a certain speed or less than a certain time creates confusion. In doing training, we'd like to be able to tell people that the training applies to all situations. When we do recertification training, instructors are asked what applies and what does not. If we have an artificial limit that says "if it's less than a day or less than 45 miles an hour," the implication is that you don't have to do anything in those situations.

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### Department Response to Comment:

- We agree that training applies to all situations; however, not every situation requires the same action. Training needs to recognize that. For example, motorists are expected to behave differently in a school zone than when they are on a major highway. Driving training programs recognize that fact and train accordingly.
- Ensuring flagger safety in construction zones is the basis of the requirements in WAC 296-155-305. If a traffic control plan is not required for jobs that last less than one day, that does not mean that the employer, responsible contractor and/or project owner "don't have to do anything" to protect flaggers.

### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(9)** has been rewritten and adopted as follows:

(a) The employer, responsible contractor and/or project owner must conduct an orientation that familiarizes the flagger with the job site each time the flagger is assigned to a new project or when job site conditions change significantly. The orientation must include, but is not limited to:

- The flagger's role and location on the job site;
- Motor vehicle and equipment in operation at the site,
- Job site traffic patterns,
- Communications and signals to be used between flaggers and equipment operators,
- On foot escape route, and
- Other hazards specific to the job site.

(b) When flaggers are used on a job (~~((site on a roadway allowing speeds of 45 mph or more and the job))~~) that will last more than one day, the employer, responsible contractor and/or project owner must keep on site, a current site specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as the following when they are appropriate:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;
- Methods and devices for delineation and channelization;
- Placement and maintenance of devices;
- Placement of flaggers;
- Roadway lighting;
- Traffic regulations; and
- Surveillance and inspection.

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### AMENDED SUBSECTION: WAC 296-155-305(10)

**Reason for Adopting Rule:** State-initiated amendments are adopted to add a:

- New subsection that specifies the advance warning sign sequences required for flagger operations.
- Table clarifying the required spacing of advance warning signs for a three and four sign set.

**Comment Received on this Subsection:**

- Most definitely positive, although sometimes there is not enough room for three signs without stacking them on top of each other, which causes confusion.

**Department Response to Comment:**

- The added table should resolve the confusion.

**Comment Received on this Subsection:**

- The State, in our opinion, has made significant changes without properly notifying the public or allowing the public a reasonable opportunity to review the revised document before the hearing. One significant change that has a major impact that has not been mentioned until receipt of the November 27, 2000 document is the requirement for 3 (three) traffic signs on roads with speed limits less than 45 mph.

Currently there are a number of situations defined in the MUTCD that would allow for only 2 (two) signs to be used on roads with reduced speed and low traffic volumes. Another example is 6G-2 of the MUTCD where requirements for short-term duration and mobile operations are reviewed.

Please reconsider this newly revised proposed rule to WAC 296-305. The State currently throughout the WAC rules refers employers and employees to the MUTCD for guidance on how to set up traffic control. The District requests the State provide reasonable evidence that the current guidelines for the number of signs provided in the MUTCD for roads with low volume and speeds of less than 45 mph is not effective. The more places employers and employees must go to find different requirements for similar work, the greater the chance for confusion and unintentional non-compliance.

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### Department Response to Comment:

- In adopting the amendments to WAC 296-155-305, we have complied with both the letter and the spirit of chapter 34. 05 RCW Administrative Procedure Act (APA). The changes you are alluding to were made in response to comments received from stakeholders who participated in a June 20, 2000, meeting held at Tumwater to gather stakeholder reaction to the department's emergency flagger rule and ideas for the permanent flagger rules. Following that meeting, several drafts were circulated to attendees and others who requested copies for comment and the rule proposal that we took to public hearing was based upon that feedback. The APA does not require a public hearing for each change in a working draft. It does require a public hearing for proposed rules before they are adopted. We have complied with that requirement.
- The requirement of both three and four sign sets are in keeping with the mandate of ESHB 2647 to increase flagger protection in work zones.
- We have amended our proposed language and also added a table to clarify three and four-sign placements on different types of roads.

### Comment Received on this Subsection:

- 10)(a) change to: "For Flagging operations a three (3) sign advance warning sequence is required, and a four (4) sign advance warning sequence is required on roadways with a 45 mph speed limit or higher".

Reason: Notice, in the recommended wording, that a "BE PREPARED TO STOP" sign is not specifically called for. The reason for that is because in (10)(b) the statement is made that the added sign is in addition to those (signs) required by the MUTCD Part VI, 1988 Edition - Revision 3. In Part VI of the MUTCD there are several "TA" examples (which means 'typical application'). TA-13 shows a short-term road closure where the closure is accomplished by flaggers. In this advance warning signing sequence a "BE PREPARED TO STOP" sign is already being used. Wording in the draft form of (10)(a) indicates that two "BE PREPARED TO STOP" signs would be required in the advance warning sequences of each direction. That is an obvious redundancy and it offers the driver no additional information, adding nothing to the driver's expectancy.

TA-10, on the other hand, shows a sign plan where the addition of the "BE PREPARED TO STOP" would be helpful without creating a meaningless redundant message. But there are several flagging situations shown in the Typical Applications of MUTCD Part VI. Adding a "BE PREPARED TO STOP" sign to all of them is not appropriate.



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### **Department Response to Comment:**

- Your comment addresses changes that were made in working drafts before the proposed rule was filed with the Code Reviser. Our proposed rule, filed with the Code Reviser on October 18, 2000 and taken to public hearing, reflected the changes you are requesting.

### **Comment Received on this Subsection:**

- The set up of warning signs should be the responsibility of the personnel that have the responsibility for installing signs. We often hire flaggers from a company that provides set up of all signs as part of their assigned work and we are charged for this service. In these incidents the flagging company should be the responsible party since they are trained and paid to provide this service.

### **Department Response to Comment:**

- The employer, responsible contractor and/or project owner has the responsibility to ensure that advance warning signs placed properly, regardless of who actually puts the signs in place on the job site. In certain circumstances, if the project owner or responsible contractor has done all that he or she could reasonably be expected to do to comply with this requirement, he or she will not be held responsible under WISHA.

### **Comment Received on this Subsection:**

- Suggestion: "For flagging operations a three (3) sign advance warning sequence is required on roadways with a 40 mph speed limit or lower..."

### **Department Response to Comment:**

We have adopted language that reflects your concern.

### **Comment Received on this Subsection:**

- The additional sign is confusing as it is written.

### **Department Response to Comment:**

- We have amended our language to clarify when the fourth sign is required.

### **Comment Received on this Subsection:**

- Regarding a required fourth sign on roadways where the posted speed limit is 45 miles per hour faster, I know the emergency rules stated that it did not increase the distance of the advanced warning zone. I see that this has been struck in the permanent one. What is the recommendation going to be? If you add a fourth sign without increasing the distance of the advanced warning area, you are violating the driver expectancies by placing signs at inconsistent intervals. I think that needs to be addressed.

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### Department Response to Comment:

- The fourth sign will increase the distance of the advanced warning area. We have added a table listing required distances for three and four-sign sets.

### Comment Received on this Subsection:

- This fourth sign adds frustration for flaggers when motorists have no regard for signs already in place. While working on a two-lane road, all advanced warning signs had been properly set at the required spacing, a motorist decided to park right in front of the "flagger ahead" sign. I immediately informed the motorist, in a polite manner, that she would have to move her vehicle. She refused to comply. I called the police department. The officer that was dispatched allowed the motorist to leave her vehicle in front of the sign. He told me that I could move the sign. The spacing requirement for the sign would have no longer been in compliance with the MUTCD and I could not place the sign in the intersection. We need to focus more on the enforcement of current laws related to work site safety and motorist compliance.

### Department Response to Comment:

- We will enforce WAC 296-155-305 and, as part of that enforcement effort, we will recommend that all of our safety compliance personnel enroll in flagger training classes. We also will be taking stronger enforcement measures in relation to companies that leave warning signs up for convenience that do not accurately reflect the circumstances of the job site, which has probably contributed to motorist disregard of existing signs.

### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(10)** has been rewritten and adopted as follows:

For all flagging operations a three (3) sign advance warning sequence is required on roadways with a speed limit below 45-mph (~~(, and)~~) A four (4) sign advance warning sequence is required on all roadways with a 45-mph or higher speed limit (~~(or higher)~~).

**Note:** The following table contains required spacing for advance warning sign placement.

| <u>Road Type</u>   | <u>Distances</u> | <u>Between</u>   | <u>Advance Warning</u> | <u>Signs</u>     |
|--------------------|------------------|------------------|------------------------|------------------|
|                    | <u>A</u>         | <u>B</u>         | <u>C</u>               | <u>D</u>         |
| Urban low speed*   | <u>200 ft.</u>   | <u>200 ft.</u>   | <u>200 ft.</u>         | <u>N/A</u>       |
| Urban high speed*  | <u>350 ft.</u>   | <u>350 ft.</u>   | <u>350 ft.</u>         | <u>350 ft.</u>   |
| Rural              | <u>500 ft.</u>   | <u>500 ft.</u>   | <u>500 ft.</u>         | <u>500 ft.</u>   |
| Expressway/Freeway | <u>1,000 ft.</u> | <u>1,600 ft.</u> | <u>2,600 ft.</u>       | <u>2,600 ft.</u> |

\*Speed category to be determined by Washington State Department of Transportation in cooperation with local jurisdictions.



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### AMENDED SUBSECTION: WAC 296-155-305(11)

**Reason for Adopting Rule:** State-initiated amendments are adopted to add:

- A new subsection requiring "employers, responsible contractors and/or project owners" to take several specific actions to ensure flagger safety. For example, floodlights must illuminate flagger workstations during hours of darkness.
- Language clarifying how floodlights should be set up to protect the flagger and prevent motorist from being disabled by floodlight glare.
- Language clarifying the illumination requirement during emergency situations.
- Language clarifying "appropriate breaks".

**Comment Received on this Subsection:**

- WAC 296-155-305(11) is "ok".

**Department Response to Comment:**

- Comment does not require a response.

**Comment Received on this Subsection:**

- This section is very positive. It is very frightening when nighttime comes or you are flagging in very foul weather and you wonder if the car speeding toward you can see you. Did they see the signs and the construction activity? My employer's policy has always stipulated that flaggers on the road could not use cell phones, pagers, etc. for the very reason the rule mentions. Also, making the contractor responsible for appropriate breaks will, hopefully, keep them more mindful of the flagger actually needing to get breaks.

**Department Response to Comment:**

- Comment does not require a response.

**Comment Received on this Subsection:**

- Utility crews, flaggers and others may need to be recruited in large numbers from outside of the state to restore power and eliminate hazards associated with downed power lines. If, for example, a severe storm results in multiple power outages and downed power lines, it is unreasonable to expect qualified flaggers and required equipment (floodlights, generators, etc.) to be available in all areas, as the proposed standard requires. Additionally, the increased travel time required to locate and deliver on-site generators and floodlights may increase the risk exposure to our employees and the public. We ask that an emergency exemption be adopted for these types of situations.

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### **Department Response to Comment:**

- We have adopted amended language that defines "an emergency" and grants an exemption from the rule's illumination requirements for those situations.

### **Comment Received on this Subsection:**

- The flag person needs to be able to see the crew working and the other flag person if possible. Putting the flag person in a field of light would inhibit their night vision, which would not allow them to protect the crew working out of the light. Also drivers under the influence are drawn to lighted areas. Therefore, the safety of the flagger may not be improved by putting them in lights.

### **Department Response to Comment:**

- We have adopted amended language that the intent of the illumination requirement and how required lighting can be monitored to best protect the flagger.

### **Comment Received on this Subsection:**

- On the illumination of the flagger station, we agree with that. But our instructors fear that drivers may get target fixation by seeing a bright light on the flagger. Particularly if somebody is under the influence or very sleepy, they may very well get fixed on the target and the flagger becomes the target. I think that it is important for the traffic to know where to go and not fix on the flaggers.

### **Department Response to Comment:**

- We have adopted amended language that the intent of the illumination requirement and how required lighting can be monitored to best protect the flagger.

### **Comment Received on this Subsection:**

- I would suggest adding, in either item (d) or (e), that the flagger must focus their attention on traffic moving in or through a work zone and not on contractor activities, unless they need to communicate with the contractor's crew or need to stop or move traffic.

### **Department Response to Comment:**

- It is the responsibility of the employer, responsible contractor and/or project owner to ensure that flaggers in the work zone comply with these rule requirements, perform their job responsibly, and remain attentive and focused on traffic moving in or through the zone.

### **Comment Received on this Subsection:**

- Flaggers need to pay a lot more attention. I see cell phones; pagers; and a lot of different things out there.

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### **Department Response to Comment:**

- It is the responsibility of the employer, responsible contractor and/or project owner to ensure that flaggers in the work zone comply with these rule requirements, perform their job responsibly, and remain attentive and focused on traffic moving in or through the zone. The existing rule addresses several of these issues specifically.

### **Comment Received on this Subsection:**

- I think section 11(e) is a good section. This is something that's been needed because, in my experiences, there has been a tendency to place flaggers in a particular spot and then forget until the end of the day without any breaks. My only comment is it would be nice to have "an appropriate break" a little better defined. What is an appropriate break? How often should it happen? How long should it be? I think this is a good step.

### **Department Response to Comment:**

- We have adopted amended language that defines the term "appropriate break".

### **Comment Received on this Subsection:**

- A lot of times we flaggers are working and the crew goes to lunch. Later the crew comes back and we are still working without a break. Very seldom do companies ask if you need a break.

### **Department Response to Comment:**

- Allowing flaggers to take an appropriate break is now a requirement of the rule.

### **Comment Received on this Subsection:**

- We have FR clothing. Trying to determine what clothing is needed at night during a storm when a flagger needs to take a break and has to share clothing with the person who replaces them is not effective. So we would like to have that included with regards to the FR and the white rain gear.

### **Department Response to Comment:**

- If a lineworker wearing FR clothing replaces a flagger while the flagger takes a break and the FR clothing does not meet the high visibility requirements of this rule, then the lineworker will have to change clothes before replacing the flagger. Replacing a flagger for a break is not considered an emergency situation.

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### Changes to the Rule (Proposed rule versus rule actually adopted):

Based upon public comments, **WAC 296-155-305(11)** has been rewritten and adopted as follows:

To protect flaggers, employers, responsible contractors and/or project owners must ensure that:

- (a) Flagger workstations are illuminated during hours of darkness by floodlights.
  - ~~((It is important to adequately illuminate the workstation without creating glare in the eyes of approaching drivers.))~~ In no case must floodlighting be permitted to create a disabling glare for drivers. The adequacy ~~((and proper placement))~~ of floodlight ~~((s))~~ placement and elimination of potential glare can best be determined by driving through and observing the floodlighted area ((workstation)) from each direction on the main roadway after initial floodlight setup.
  - Emergency situations are exempt from these illumination requirements. For the purpose of this rule, "emergency" means an unforeseen occurrence endangering life, limb, or property.
- (b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs ~~((should))~~ must either be taken down or covered.
- (c) Flaggers are not assigned other duties while engaged in flagging activities.
- (d) Flaggers do not use devices ~~((e.g.))~~ for example, cell phones, pagers, radio headphone, etc.) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communications between flaggers to direct traffic or ensure flagger safety are acceptable.
- (e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert. For the purpose of this rule, "appropriate break" means a rest period of at least 10 minutes, on the employer's time, for each 4 hours of working time.
  - Rest periods must be scheduled as near as possible to the midpoint of the work period.
  - A flagger must not be allowed to work more than three hours without a rest period.
  - Scheduled rest periods are not required where the nature of the work allows a flagger to take intermittent rest periods equivalent to 10 minutes for each 4 hours worked.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Education and Training:**

##### **Comment Received:**

- Improved training should be required in the flagger certification class. This is one of my biggest concerns. The flaggers coming out of class don't even know the basic setup for the work zone. They can't put up an advance warning sign in the proper order and the new rules require additional signs.

Flagger training should include elements on high visibility warning garments designed according to ANSI so the flagger understands the requirements in the rule. It's the flagger that's out there. It's their injury inevitably if there is an accident. They should know this for their own safety.

In the certification course, training consists only of short-term daytime operations. There is no training for multilane, urban streets, multilane intersection work zones, detours and local operations, traffic control plan reading and development, positive protection, work zone capacity and night work, maintenance and operation of variable-message signboards, arrow boards, truck-mounted attenuators, or advance warning signs, or vehicles.

The usual response is that the traffic control supervisor is responsible for these duties, but this is not so. On any given day or night, you will find the flagger operating and maintaining the equipment and setting up work sites according to traffic control plans. When you ask the flagger if they have had specific training for that work, they will say no. They learned it on the job from somebody else or through hearsay or from just doing whatever they felt would work best at the time.

##### **Department Response to Comment:**

- We agree that flagger training needs to be improved. We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up.



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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Education and Training:**

##### **Comment Received:**

- I've been doing setups for about three and a half, four years by learning, reading and getting hands-on learning from other people. If you're to push the issue of more training for flaggers, I think there should be some type of a class for setup only. You have to go through a certification course to become a flagger. Why not have classes strictly for setup? I know it is taught in certification classes, but maybe something just generally on setup is needed. I got my TCS license and learned a lot about doing setups, especially on the freeway, but a lot of the average flaggers that come through don't have a clue unless they hear about it. So, there should be something where you just learn the basic setup. This would give the average flagger better knowledge and understanding. I think a lot of the clients, the construction companies, need to learn it also. I know they need the information because I come across work zones day in and day out where the signs aren't set right.

##### **Department Response to Comment:**

- We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up.

##### **Comment Received:**

- It was mentioned that covering traffic work zones wasn't required in flagging classes, but it seems to me that they are required. At least I teach some of that in my classes. I know in a lot of my classes many of the students may never be flaggers and they leave the class with a different idea about work zones and what flaggers do. It would be nice if some sort of flagger certification could be touched on in high school when students are taking driver's education. That would help things a lot because people have no idea what a flagger's supposed to be doing.

##### **Department Response to Comment:**

- We have no jurisdiction over driver education.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Education and Training:**

##### **Comment Received:**

- We believe that training cannot be limited to flaggers alone. We need to promote additional awareness among the public, contractors and their employees. Many of these people don't recognize some of the dangers that they can put our people in. The State of Washington in its driving test and in the driving education classes does give some training on how to drive in highway construction, but an insufficient emphasis is put on driver's conduct on the highways. There are only 25 questions that can be given on the driving test. So you can realize how many are directed towards highway.

##### **Department Response to Comment:**

- The issues you raise are good ones. Our jurisdiction regarding training requirements is limited. Currently, we plan to increase the number of safety compliance personnel enrolled in flagger training courses.

##### **Comment Received:**

- I've been flagging for a few years and I've learned a lot from a lot of different people. I've worked with some of the people in this room and they've taught me a lot of good things. But what we need right now is a lot more education. It's not really the flagger's fault for what happens out there. It's the companies that are responsible to make sure that this is all done right.

##### **Department Response to Comment:**

- We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up.
- Regarding your comment about company responsibility, we agree. Clearly employers, responsible contractors and/or project owners have a duty to follow the requirements of WAC 296-155-305.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Education and Training:**

##### **Comment Received:**

- Instructors give each person a full class. We are required to do that or we can no longer teach. What our students do with the information after they leave the class is not our responsibility. You either care to live or you don't.

I would also like to see more owners, superintendents and foremen take the flagging class so they know what is expected and what isn't. Many times we've gotten out there and asked for a flagger sign and been told either that it was stolen the night before or that we're only going to be in this location for two hours. It's hard not to walk off the job even though you don't want to. It's hard to work knowing that we're not legal without those signs.

##### **Department Response to Comment:**

- The issues you raise are good ones. Our jurisdiction regarding training requirements is limited.

##### **Comment Received:**

- We recognize that the current training standard is grossly insufficient. I have been through the course and I'm familiar with it. It's an eight-hour course. There's an open book exam at the end of it. There is essentially no OJT associated with it. It's classroom work only and with an instructor. Essentially at the end of this course, after the completion of the open book test, nobody fails. Everybody is essentially qualified at the completion of this course to go out and do anything and all things that traffic control flaggers are supposed to do. We believe that much more extensive training is necessary

Some employers have recognized the need and have increased the levels of training, and it has proven to be effective. Additional training should be supplemented by some OJT requirements. The present system of initial training doesn't qualify a person to go out and do all the things that we would like to think they're qualified to do.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Education and Training:**

##### **Comment Received (continued):**

In many respects the training for a flagger resembles that of an apprentice. We're not looking at a four or six-year training requirement like we see for carpenters and operators, but a series of appropriate training events and qualification requirements. If you want a parallel example, DOT has got their traffic control supervisors. DOT lays out very clearly what traffic control supervisors need, what experience they have to have, and what academic levels they must reach (test has got an 80% minimum passing grade).

If you compare what we are requiring traffic control supervisors to do and what we're requiring flaggers to do there's a significant discrepancy. We are firmly convinced that thorough, proper training is one of the primary solutions to this problem and we should not disregard it. The training requirements and course syllabus should be reviewed and significantly improved.

##### **Department Response to Comment:**

- We will send an official letter to the Traffic Control Oversight Committee and The Evergreen Safety Council asking them to expand their certified flagger training to include MUTCD setup requirements and on the job experience in set up.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Inspection and Enforcement:**

##### **Comment Received:**

- L&I inspectors have already been ticketing and handing out citations for the emergency rules, but nobody was informed of the rules. I didn't receive them until I called the department and I'm a certified instructor. I should have been given this information. My company found out about it after the first citation was issued. Three different people had three different versions or interpretations. So, it was misinformation and I don't think it should be. I think people should have been given time to comply with rules instead of saying, boom, here you are.

Are the L&I inspectors being certified in flagging? Do they know what to look for before they start handing out citations? Do they really know what they're looking for? One of the guys that gave a citation was retired off an aircraft carrier. When did he work on the road? I'm not trying to be mean or rude, but I would like to see people inspecting who know what they're dealing with. They should be certified.

##### **Department Response to Comment:**

- The emergency rules were required by statute to be adopted and in effect. The current proposal concerns the permanent rules that will replace the emergency rules.
- While it is not necessary that safety inspectors know how to do every task that they may be called upon to inspect (nor is it practical), we are increasing the number of WISHA enforcement staff who have been trained as flaggers.

##### **Comment Received:**

- Are L&I inspectors trained to come out and know what they're looking for in the work zone? When the requirement came out for the additional warning sign, we started in on that right away. One of our crews didn't because we were out of signs and waiting for the right signs to come in. An L&I inspector came out, and he thought it was ok, but we only had three signs at that particular site. That kind of tells me that the inspectors really aren't up to speed on what is required.

##### **Department Response to Comment:**

- While it is not necessary that safety inspectors know how to do every task that they may be called upon to inspect (nor is it practical), we are increasing the number of WISHA enforcement staff who have been trained as flaggers. The emergency rule was developed rapidly; however, WISHA staff was notified of the changes when they were made.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Inspection and Enforcement:**

##### **Comment Received:**

- I've been flagging for quite a while now, and the reflectorized material and the rest of the things that are going to go into place I firmly agree with. All of this stuff is not going to do us a darn bit of good unless we get some enforcement to back us up.

##### **Department Response to Comment:**

- We clearly intend to enforce WAC 296-155-305 when it becomes effective. However, the primary responsibility for enforcing safety and health requirements belongs to the employer; if employers are failing to meet that responsibility, individuals can contact their local L&I office to report apparent safety and health violations.

##### **Comment Received:**

- We were visited four or five months ago on a job site in Snohomish County by an L&I inspector. We talked for approximately an hour and a half. He brought up various items that he was concerned with. I appreciate that. Generally, on that site, traffic control will be set up according to plan. A lot of the things he brought up, I was not aware of. I asked him where I could find this information. All he could say was it was available through various WACs and RCWs, and it was my responsibility as a contractor to seek and find the information. It was not his responsibility to provide it for me. I was only interested in getting some help and cooperation from L&I. I don't feel that this was an appropriate comment for the inspector to make. I would hope that inspectors and other department personnel would be better prepared to try to help contractors and subcontractors make the job site a safer environment. My suggestion to the department is to provide some sort of list of applicable WACs and RCWs to general contractors. Let's try to get those to general contractors.

We fight an uphill battle trying to convince contractors that:

- ✓ These rules need to happen;
- ✓ They are citable; and
- ✓ The department is serious about them.

A couple of contractors that I have approached basically said: "The project inspector hasn't said anything about it; the cops haven't said anything; so who are you?" We need to make a concerted effort to let contractors know that this is a serious issue.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Inspection and Enforcement:**

##### **Department Response to Comment:**

- One of our priorities, as an agency, is to improve the delivery of services in a professional and courteous manner; one of the responsibilities of our enforcement staff is to provide compliance assistance such as you describe. Your comment indicates that we still need to stress this priority in our internal training until it becomes second nature to all employees who deal directly with our customers. You can help us pursue this priority by raising situations such as you describe with the local L&I office so they can take appropriate corrective measures.
- We are currently involved in a multi-year project to make the rules we enforce clearer and more accessible. We do have our RCWs and WACs on the Internet. You can access them by accessing the department at <http://www.wa.gov/lni>. You might also want to request a copy of our recently proposed WISHA Safety and Health Core Rules. You can do so by calling (360) 902-5541.
- Regarding your comments concerning contractors, you have the right to file a safety and health complaint or referral with the department.

##### **Comment Received:**

- I am a certified flagger and a certified TCS. Every day I see flaggers out there doing a great job, but there are a lot of them that don't follow the training or that forget the training that they've had. I think the flaggers need to have some personal responsibility and some credibility with the motorists. I think the key would be through enforcement of these rules when they're adopted. Currently, I don't know of a lot of enforcement that goes on.

##### **Department Response to Comment:**

- We clearly intend to enforce WAC 296-155-305 when it becomes effective. . However, the primary responsibility for enforcing safety and health requirements belongs to the employer; if employers are failing to meet that responsibility, individuals can contact their local L&I office to report apparent safety and health violations.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Inspection and Enforcement:**

##### **Comment Received:**

- I'm a flagger, TCS, and instructor, and owner of a certified traffic control business. In over 15 years experience as a flagger, nothing else works better than common sense. MUTCD is good but it could be better. The new rules don't make it better. What does make it better are the people who implement it. And when there's implementation, there's got to be consequences. This is enforcement. That's where this department, L&I, has to come into play.

When the flagger card was pink with no expiration date, I was carded two or three times a week by the L&I. Now L&I pass these responsibilities on to the contracting agency. The contracting agency has an inspector but it's a buddy/buddy system. That's just an example where enforcement is relaxing. And many general contractors have a conflict of interest with safety of the public. Maintaining the status quo means implementation has to be better and the general contractors have to know the consequences. There must be enforcement by L&I. If we want to change the status quo, we don't make the general contractors the traffic control contractor. The general contractor must hire a certified traffic control business. We will take on the burden of setup and the proper methods of flagging.

##### **Department Response to Comment:**

- We clearly intend to enforce WAC 296-155-305 when it becomes effective.
- Regardless of who does setups and flagging, the employer, responsible contractor and/or project owner is responsible for making sure that there is compliance with the requirements of this rule.

#### **Flagger Responsibility:**

##### **Comment Received:**

- The flaggers aren't paying attention. I think there needs to be more awareness of that. People go out and check out job sites and give out fines for doing the wrong things. A lot of those fines go to the company the person is working for, but they should also go to the individual that makes the mistake because of their own stupidity. Even though they might be taught the correct way they still do it wrong. Why blame the company they're working for? There are certain issues that the company maybe should be blamed for, but a lot of it is the person's own fault for not paying attention, not following the rules.



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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Flagger Responsibility:**

##### **Department Response to Comment:**

- While both employers and employees have responsibilities under WISHA, we do not have the statutory authority to cite employees. Employers, however, have ample authority to hold their employees accountable. Ultimately, it is the responsibility of the employer, responsible contractor and/or project owner to ensure compliance with WAC 296-155-305 requirements.

##### **Comment Received:**

- My biggest concern with many of the job sites that I drive through is seeing the flagger pay more attention to whatever the guys are doing on the line or in the hole rather than paying attention to traffic. I would suggest that you add language requiring that the flagger must focus their attention on the traffic moving in or through a work zone and not on the activities of the contractor.

If an L&I inspector drives through a traffic control zone and a flagger is not paying attention to traffic, the contractor or the subcontractor (if it is a traffic control company) will bear the fine. The flagger is not held accountable. By incorporating this suggested language, you put more responsibility on the flagger. Our company like most traffic control companies do the very best they can to train their flaggers and let them know the serious nature of traffic control, especially in high-speed environments. We can only do so much. We replace flaggers the contractors are not happy with and that we are not happy with. We can only do so much. The flagger needs to be held accountable.

##### **Department Response to Comment:**

- While both employers and employees have responsibilities under WISHA, we do not have the statutory authority to cite employees. Employers, however, have ample authority to hold their employees accountable. Ultimately, it is the responsibility of the employer, responsible contractor and/or project owner to ensure compliance with WAC 296-155-305 requirements.

##### **Comment Received:**

- You should hold the flagger responsible for breaking the rules instead of the company. The employee has certain responsibilities and should be held personally responsible for their failure to follow policy and procedure when spotted by L&I.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Flagger Responsibility:**

##### **Department Response to Comment:**

- While both employers and employees have responsibilities under WISHA, we do not have the statutory authority to cite employees. Employers, however, have ample authority to hold their employees accountable. Ultimately, it is the responsibility of the employer, responsible contractor and/or project owner to ensure compliance with WAC 296-155-305 requirements.

#### **Public Responsibility:**

##### **Comment Received:**

- The most important issue is increasing public awareness. We used to see this in the TV with the "give them a break" program. This year I haven't seen this on the TV but it should be. Hopefully, next summer before the construction season, we will see this type of public awareness program again. This is very important. They're the ones that hate us; we don't hate them.

##### **Department Response to Comment:**

- We have no jurisdiction over the "give them a break" program. WSDOT created and operated it.

##### **Comment Received:**

- Unfortunately, these proposed rules don't address the biggest hazard to flaggers, the public. We can put more signs up; that does help. We can change the colorings we're using; that helps, but we can't address the public in the WAC codes. When this is all over, I hope the same force that's behind this effort addresses the need for the public to be better informed and the need for existing enforcement agencies to better enforce the rules and regulations to the people on the road. We do not have control of the cars on the road. We have people out there that should not be driving their vehicles, and we have to go out and try to do the best we can in that environment. Adding gadgets, adding distractions to our flaggers is not going to help us in that endeavor.

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### COMMENTS BEYOND THE SCOPE OF THE PUBLIC HEARING

#### **Public Responsibility:**

##### **Department Response to Comment:**

- We understand your concern but we do not have jurisdiction over driver safety and traffic enforcement. However, these rules do address those hazards. By locating flaggers in safer locations, using alternate traffic control methods, providing additional protective measures (such as jersey barriers and other “gadgets”), and appropriately designing work areas, employers *can* provide greater protection to flaggers from inattentive or uninformed drivers.

##### **Comment Received:**

- One thing that is **STRONGLY** and **VERY WIDELY** felt among flaggers is that some changes to other regulations and rules could benefit us all by saving lives. Strong consideration should be given on how motor vehicle driver licenses are issued and renewed.
  - ✓ Possibly including more than ONE paragraph in the drivers manual on work zone behavior would be a start.
  - ✓ Maybe making it mandatory for **EVERYONE** to **RETAKE** both the written and driving test every ten years or so to keep up with the changes in the driving laws.
  - ✓ Make it mandatory after a specific age that a driving test be taken at each renewal (two of the most recent fatalities were caused by elderly people). An eye test is just not enough.

Also, more public awareness and education is needed. Those "give them a break" commercials would be more effective during prime time than during the wee hours of the morning.

##### **Department Response to Comment:**

- We understand your concern but we do not have jurisdiction over driver safety and traffic enforcement.
- We have no jurisdiction over the "give them a break" program. WSDOT created and operated it.